



**U. S. Department of Housing and Urban Development  
Field Office Director  
Memphis**

September 4, 2018

Honorable Jim Strickland  
Mayor, City of Memphis  
125 N. Main Street  
Memphis, TN 38103

Dear Mayor Strickland:

**SUBJECT:** Marina Cove – IDIS Activity #12587  
Cleaborn Pointe – IDIS Activity #13033  
Findings of non-compliance with the HOME program requirements

This letter is a follow-up to a waiver denial issued to the city of Memphis, Tennessee, on March 15, 2018, for its Fiscal Year (FY) 2012 HOME expenditure requirement. In the process of reviewing information provided by the city of Memphis to reduce its FY 2012 expenditure shortfall, HUD became concerned that there was significant noncompliance related to the Marina Cove and Cleaborn Pointe activities. The Department further reviewed information entered for HOME activity 12587, Marina Cove, and HOME activity 13033, Cleaborn Pointe, in HUD's Integrated Disbursement Information System (IDIS). The Department has concluded that HOME funds were committed in IDIS for these two projects prior to meeting the definition of commitment at 24 CFR 92.2. This letter issues findings of noncompliance and requires corrective actions including the repayment of HOME funds for Marina Cove and Cleaborn Pointe.

**Marina Cove**

**Background**

The 24-acre Marina Cove property was acquired by Power Center Community Development Corporation (PCCDC) on July 15, 2010. On July 23, 2010, the city set up and funded the Marina Cove activity in the IDIS with \$1,700,000 of HOME funds before executing a written agreement with PCCDC for the project. On March 26, 2012, and October 1, 2012, HOME funds totaling \$1,303,277 were drawn from IDIS to reimburse the city for demolition and site work that it conducted between October 4, 2010, and March 28, 2012. The city never owned the Marina Cove property. The city entered into a written agreement with PCCDC on June 30, 2014, which committed \$1,303,277 of HOME funds to the project. The agreement specified that HOME funds were being provided to PCCDC for demolition of Marina Cove apartments and the new construction of a 70-unit multi-family rental project, with 17 units to be designated as HOME-assisted.

*HUD's mission is to increase homeownership, support community development and increase access to affordable housing free from discrimination.*

However, based on a cost summary provided by the city, dated April 19, 2012, the city used the entire \$1,303,277 to reimburse itself for demolition, filling of drainage canals, creation of storm water retention facilities and site grading and seeding that it performed on the 24-acre Marina Cove site.

On August 1, 2016, the city amended the agreement to increase total HOME funding to \$2,631,000. This amendment changed the scope of the project from 17 HOME-assisted rental units to the construction of nine single-family homeownership units to be constructed by Habitat for Humanity. No evidence of subsidy layering analysis or underwriting was provided by the city to justify an increase of HOME funds and a decrease in HOME-assisted units. Habitat for Humanity submitted a bid of \$1,025,043 to PCCDC on September 8, 2016, for the construction of the nine units. According to Shelby County land records, the nine single-family homeownership units were constructed on approximately 1.5 acres of the 24-acre site. Prior to the construction of the nine affordable units, PCCDC made site improvements and constructed a school on the Marina Cove site. To date, the city has expended \$2,295,926.42 of the \$2,631,000 in HOME funds allocated in IDIS to the Marina Cove project.

### **Findings of Non-compliance**

The Department has identified the following statutory and regulatory violations regarding IDIS activity 12587:

1. The city violated HOME regulations at §92.502(b) that required the city to commit funds to a specific local project prior to setting up activity 12587 in IDIS. The city failed to commit to a specific local project within the meaning of the definition of "commitment" in §92.2 of the HOME regulations. Instead, the city asserted that a HOME written agreement was not required because they fell under a provision in §92.2, which states that for a project owned by a participating jurisdiction (PJ), HOME funds are committed when the project has been set up in IDIS and construction can be expected to start within 12 months. However, since the Marina Cove property was never owned by the city, the city was required to execute a legally binding written agreement with the owner, PCCDC. The city violated the requirement at §92.502(b) with its initial commitment of \$1,700,000 of HOME funds in IDIS and again on July 28, 2016, when \$931,000 of HOME funds were added in IDIS prior to entering into a commitment to support the total HOME allocation of \$2,631,000.
2. The city violated the underwriting and subsidy layering provision at §92.250(b), which requires a PJ to evaluate the project in accordance with guidelines that it has adopted for determining reasonable level of return and investment in a HOME-assisted project. The city provided no justification for its initial investment of \$1,700,000, no examination of sources and uses of funds, no determination of cost reasonableness and no assessment of market demand. Additionally, the increase of \$931,000 of HOME funds in July 2016 is not supported by any identifiable underwriting process.
3. The city's written agreements and amendments committing funds to IDIS activity 12587 did not meet the requirements for such agreements established at §92.504(c)(3). Among

other requirements, this provision requires written agreements committing HOME funds to projects to contain addresses or legal descriptions, project budgets and construction schedules, including milestones in sufficient detail to provide a sound basis for the participating jurisdiction to monitor performance.

4. The city set up activity 12587 in IDIS and expended funds before it executed a written agreement for the project in violation of §92.504(b), which requires execution of a written agreement before HOME funds can be disbursed.
5. The city funded HOME activity 12587 in amounts that exceeded the amount it had committed to the activity in its written agreement and amendments, in violation of §92.504(b). This had the effect of inaccurately increasing the total amount of commitments that HUD credited to the city when determining whether it met its 24-month commitment deadline. Similarly, by entering commitment amounts in IDIS that were reflected in written agreements but not eligible for HOME funding, the city further increased the amounts showing as committed in IDIS, which rendered HUD's determination that the city had met its statutory commitment deadlines inaccurate for multiple years between 2008-2013. A detail of these adjusted shortfall amounts is included in the corrective action section below.
6. The city expended HOME funds for ineligible costs in violation of §92.214(a)(9). According to the city's interfund billing statements, the cost summary provided by the city, and the IDIS voucher summary, \$1,303,277.30 of HOME funds was used to reimburse the city for demolition of the Marina Cove apartments, site grading, drainage and construction of a storm water retention basin. The Marina Cove site is approximately 24-acres. The HOME definition of project site at §92.206(a)(3)(iii) is the property, owned by the project owner, upon which the project is located. The nine-unit HOME project that was developed on the site occupies approximately 1.5 acres. Expenses billed to the HOME program not allocable to the development of the nine-unit project are ineligible HOME costs. An additional \$61,649.12 was drawn from IDIS on October 3, 2011. The city did not provide supporting documentation to establish that this draw was made for eligible HOME expenditures.

## **Cleaborn Pointe**

### **Background**

On May 3, 2011 the city executed a Master Development Agreement (MDA) with the Memphis Housing Authority (MHA) for the Cleaborn Pointe project. According to information provided by the city, Cleaborn Pointe is a large HOPE VI redevelopment project of the former Dixie Homes public housing development with multiple sources of local and federal funds. This original development agreement did not include HOME funds or HOME requirements and cannot be considered a valid HOME agreement. The City and MHA amended the development agreement on April 2, 2012 but did not commit HOME funds to the project or include HOME requirements. On June 28, 2012, the city set up and funded \$2,500,000 of HOME funds to the Cleaborn Pointe project in IDIS before executing a valid HOME written agreement. Over the

course of the next four years, the city continued to increase the amount of HOME funds committed to the Cleaborn Pointe activity in IDIS. On December 5, 2013, the city amended the MDA and added \$1,365,000 of HOME funds, on November 12, 2014, the city added an additional \$2,618,486.91 of HOME funds. The final amendment provided by the city lacks a date or signature but appears to be from 2017. This final amendment increased the total HOME funding to a total of \$8,811,386. These amendments committed HOME funds and proposed varying numbers of HOME-assisted units, however, none of the amendments imposed HOME requirements on the project. To date, \$4,585,844.79 of HOME funds have been drawn for the Cleaborn Pointe activity, including \$900,000 drawn from IDIS on August 28, 2013. This draw occurred 4 months before HOME funds were committed in the December 5, 2013 amendment. On July 10, 2018, the city reduced the HOME funding amount in IDIS to the drawn amount of \$4,585,844.79 and completed the project with 22 units.

### **Findings of Non-compliance**

The Department has identified the following statutory and regulatory violations regarding IDIS activity 13033:

1. The city violated HOME regulations at §92.502(b) that required the city to commit funds to a specific local project prior to setting up an activity in IDIS. The city failed to commit to a specific local project within the meaning of the definition of "commitment" in §92.2 of the HOME regulations when the city set up and added HOME funds to activity 13033 in IDIS. Written agreements and amendments between the city of Memphis and the Memphis Housing Authority (MHA) were all executed after the set-up and commitment dates in IDIS.
2. The city violated the underwriting and subsidy layering provision at §92.250(b) which requires a PJ to evaluate the project in accordance with guidelines that it has adopted for determining reasonable level of return and investment in a HOME-assisted project. The city provided no justification for its investment of \$8,811,386.94, no examination of sources and uses of funds, no determination of cost reasonableness and no assessment of market demand.
3. The city entered a project commitment amount for activity 13033 that exceeded the amount it had committed to the activity in its written agreement and amendments in violation of §92.504(b). This had the effect of inaccurately increasing the total amount of commitments that HUD credited to the city when determining whether it met its 24-month commitment deadline. The city engaged in a pattern of substantially increasing funding for the Cleaborn activity 13033 in IDIS as the city's yearly commitment deadline approached. These increases appear to coincide with the 4-month and 1-month commitment shortfall notification letters provided by the Knoxville Field Office alerting the city to its impending commitment shortfalls. The amount of HOME funding added yearly to the Cleaborn project between 2012 and 2015 averaged approximately \$2.2 million per year. This represented nearly all of the city's yearly HOME entitlement funding. These commitments severely limited the city's ability to fund other projects and

grossly limited the development of HOME-assisted affordable housing in Memphis. In July 2018, just over 6 years since the initial HOME funding in IDIS, the city uncommitted \$4,225,542.15 from the Cleaborn activity 13033. The chart below illustrates this pattern of excessive commitment, not supported by valid written agreements and ultimately not needed for the project.

Deadline Date	Estimated Date for increase in funding for Activity 13033	Activity 13033 HOME Funded Amount (based on Open Activities Report)	
		<i>5/31/12 Report</i>	<i>6/30/12 Report</i>
7/31/2012	June 2012	\$0	\$2,500,000
		<i>3/31/13 Report</i>	<i>4/30/13 Report</i>
6/30/2013	April 2013	\$2,500,000	\$4,400,000
		<i>5/31/14 Report</i>	<i>6/30/14 Report</i>
7/31/2014	June 2014	\$4,635,000	\$6,335,000
		<i>2/28/15 Report</i>	<i>3/31/15 Report</i>
7/31/2015	March 2015	\$6,335,000	\$8,811,386.94

Similarly, by entering commitment amounts in IDIS that were reflected in written agreements but nevertheless not eligible for HOME funding, the city further increased its total commitment amounts, which rendered HUD's determination that the city had met its statutory commitment deadlines inaccurate for multiple years between 2008-2013. A detail of these adjusted shortfall amounts is included in the corrective action section below.

4. The city's written agreements and amendments committing funds to IDIS activity 13033 did not meet the requirements for such agreements established at §92.504(c)(3). Among other requirements, this provision requires written agreements committing HOME funds to projects to contain addresses or legal descriptions, project budgets and construction schedules, including milestones in sufficient detail to provide a sound basis for the participating jurisdiction to monitor performance. Neither the Master Development Agreement, nor any of the amendments imposed HOME requirements on the project, as required in §92.504(c)(3).
5. The city has not maintained or provided supporting documentation for the current total HOME expenditure of \$4,585,844.79 in violation of §92.508(a)(3)(ii). As of July 10, 2018, the city has entered 22 unit addresses into IDIS and completed the Cleaborn Pointe project. Only 8 of the 22 addresses listed in IDIS are included in the November 12, 2014 written agreement. The HOME regulations at §92.250(a) specify that the total amount of HOME funds that may be invested on a per-unit basis may not exceed the HOME maximum per-unit subsidy limits established under section 221(d)(3)(ii) of the National Housing Act. In addition, the HOME regulations at §92.205(d)(1) requires that only the actual HOME eligible development costs of assisted units may be charged to the HOME program. The city has not provided a cost allocation to support the total amount

expended for Cleaborn Pointe. Based on conflicting or missing information provided by the city it is not possible to determine which units in the Cleaborn project are HOME-assisted or the actual HOME expenditure for each unit. Expenditures for costs not allocable to the HOME-assisted units are ineligible.

### **Required Corrective Actions**

As a result, of the invalid commitments to the Marina Cove and Cleaborn Pointe projects HUD was required to reexamine the city's compliance with its statutory HOME commitment requirements for deadlines occurring in 2010, 2011, 2012, 2013, 2014 and 2015. The Department's recalculation of the city's compliance with its commitment requirements showed that the total shortfall was \$10,367,244. Consequently, pursuant to Section 218(g) of the HOME statute and implementing regulations at §92.500(d)(2)(i)(B), HUD must deobligate a total of \$10,367,244 from the city's HOME Treasury account. Please note that \$1,377,960.38 of the above amount has already been deobligated because of the city's failure to expend HOME funds in accordance with the five-year expenditure deadline for FY 2012. Consequently, the total remaining deobligation for the stated grant years is \$8,989,283.62. This deobligation will be completed within 30-days of the date of this letter.

<b>Requirement</b>	<b>Deadline Date</b>	<b>Adjusted Requirement Amount</b>	<b>Ineligible Commitments in IDIS on Deadline Date</b>	<b>Adjusted Total Commitments</b>	<b>Shortfall</b>
2008 Commitment	8/31/2010	\$82,456,491	\$1,700,000.00	\$81,435,199	\$1,021,292
2009 Commitment	7/31/2011	\$86,385,614	\$1,700,000.00	\$86,106,102	\$279,512
2010 Commitment	7/31/2012	\$91,024,049	\$4,200,000.00	\$89,044,511	\$1,979,538
2011 Commitment	6/30/2013	\$93,386,756	\$6,100,000.00	\$90,868,357	\$2,518,399
2012 Commitment	7/31/2014	\$93,669,209	\$8,035,000.00	\$91,746,132	\$1,923,077
2013 Commitment	7/31/2015	\$94,356,626	\$10,511,386.94	\$91,711,200	\$2,645,426
<b>Total Shortfall</b>					<b>\$10,367,244.00</b>
<b>Less 2012 Expenditure Deobligation</b>					<b>1,377,960.38</b>
<b>Remaining Deobligation</b>					<b>\$8,989,283.62</b>

As a result of the document review and distinct from the required deobligation described above, HUD has determined that ineligible HOME expenditures were made on the Marina Cove and Cleaborn Pointe projects. Consequently, HUD will require repayment of these ineligible HOME costs.

The city did not execute a legally binding written agreement prior to funding a HOME activity in IDIS and expending HOME funds for Marina Cove. In addition, the demolition and site work completed by the city on the 24-acre site is far greater than the limited scope of the affordable homebuyer project that was developed on a 1.5-acre portion of the site. Consequently, HUD may require the city to repay with nonfederal funds \$1,364,926.42 of HOME funds drawn from IDIS prior to the June 30, 2014 agreement. The city must repay \$61,649.12 of HOME funds drawn from IDIS on October 3, 2011, because the city has not

provided supporting documentation for these costs. However, the Department will not require repayment of the proportion of the \$1,303,277.30 of site work costs attributable to the 1.5-acre HOME homebuyer development project site if the city can establish eligibility of the project. In addition, the city must provide additional documents to establish eligibility of the nine homebuyer units constructed by Habitat for Humanity or HUD will require repayment of \$931,000 of HOME funds expended for development. To establish eligibility, the city must provide the following:

1. Documentation that units were acquired by HOME income-eligible homebuyers
2. Executed Homebuyer agreements that impose the requirements at §92.254
3. Documentation of Resale or Recapture provisions imposed on the properties
4. Documentation that property standards meet the requirements in §92.251

The city must provide this documentation within 45 days of the date of this letter or remit repayment with non-federal funds to its HOME Investment Trust Fund local account. If the city is unable to establish eligibility of the Habitat for Humanity homebuyer development project, the city must repay the entire \$2,295,926.42 of HOME funds expended for Marina Cove.

For the Cleaborn Pointe project, the city did not execute a valid HOME written agreement imposing HOME requirements on the project. Consequently, the expenditure of \$4,585,844.79 of HOME funds is ineligible and must be repaid with nonfederal funds to the HOME Investment Trust Fund local account in accordance with 92.503(b)(2) and (3). The city must remit this repayment within 45 days of the date of this letter. If the city does not have the non-federal funds to immediately remit repayment, it may submit a proposed repayment plan not to exceed three years to this office within 45 days from the date of this letter. The city may also request a voluntary reduction of its HOME grants in lieu of repayment to its local account within 45 days from the date of this letter.

If you have any questions, please contact Mary C. Wilson, Director, Office of Community Planning and Development at (865) 474-8225, or Virginia Sardone, Director, Office of Affordable Housing Programs at (202) 708-2684, extension 4606. As always, you may contact me at (615) 515-8510.

Sincerely yours,



Sernorma L. Mitchell

Acting Memphis Field Office Director, 4KMA

cc:

Paul Young, Director, Memphis Division of  
Housing and Community Development